Supreme Court, U.S.
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No. 93-94

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1993

ROBERT F. BISER,
Petitioner,

v.

TOWN OF BEL AIR, MARYLAND,
CAROL L. DEIBEL, EDSEL A. DOCKEN, SR.
JAMES M. DECKER, JOHN E. YANTZ,
DONALD YOUNG AND D. DAVID RANNEY, JR.
Respondents.

Petition For Writ of Certiorari to The
United States Court of Appeals
for The Fourth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

CAROL B. O'KEEFFE
Levan, Schimel, Belman
& Abramson, P. A.,
9881 Broken Land Pkwy.
Suite 400
Columbia, Maryland 21046
(410) 381-6000

Attorney for Respondents

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QUESTION PRESENTED

Whether the Court of Appeals properly held that Petitioner had no property interest under Maryland law in the grant of a special exception.

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RESPONDENTS' BRIEF IN OPPOSITION

STATEMENT OF THE CASE

Respondents accept Petitioner's statement of the case, with two exceptions. First, when Petitioner met in August, 1988, with Respondent, Carol Deibel (hereinafter, "Deibel"), the Director of Planning and Community Development for the Town of Bel Air, (hereinafter, the "Town"), Deibel reviewed Petitioner's preliminary plans for the two buildings he proposed to construct and determined that the layout of the two buildings would require setback variances from the Board of Appeals, even if he were ultimately to obtain a special exception for the commercial use he desired. App. A-4; Compl. ¶ 13. Deibel also told Biser that the buildings would have to exist before he could apply for a special exception to convert dwellings to professional office use. Id. When Petitioner appeared before the Board of Appeals on September 27, 1988, he was not applying for a special exception, as implied by the Statement of the Case in the Petition for Writ of Certiorari, (Pet. at p.4). Rather, he was applying for setback variances to construct two buildings. App. A-5; Compl. ¶ 14. The distinction is significant because Petitioner has consistently offered the fact that at the September 27, 1988 meeting the Board did not object to Petitioner's description of his plans to obtain a special exception as evidence of the Board's implied approval of those plans, thus making the Board's later denial of the special exception when it was formally under consideration "arbitrary and capricious". The reality is that Petitioner's special

exception was not before the Board on September 27, 1988, and the Board's failure to object to Biser's plans had no legal significance, whatsoever.

Second, the district court did not, as characterized in the Petition at page 8, reject "respondents' assertion that the Complaint insufficiently alleged an entitlement that qualified for due process protection." The district court stated that, "[c]learly Biser may not claim an entitlement under state law to a special exception, as the decision to grant or deny a special exception is within the Board's discretion." (Pet. at B-12-13). However, unlike the Fourth Circuit, the district court did not end its inquiry with the conclusion that no claim of entitlement to the special exception sought by Biser existed under state law, but went on to review Respondents' conduct and held that it failed to rise to the level of a substantive due process violation, (Pet. at B-14). The district court examined the factual allegations of Respondents' supposed wrongdoing and found that the facts, "support the inference that Town employees gave varying interpretations to an ambiguous provision; but no more." (Pet. at B-14).

REASONS FOR DENYING THE PETITION

Petitioner's two professional buildings now stand as a testament to the capacity of reasonable people to reach differing conclusions regarding the correct interpretation of statutes and ordinances. The Board of Appeals of the Town of Bel Air (the "Board"), whose three

members are Respondents herein, read the Zoning Regulations of the Town of Bel Air ("Zoning Regulations") to require the existence of "dwellings" in compliance with the Town's building code before a special exception could be granted to convert the dwellings into professional offices. Petitioner's buildings did not meet the building code requirements for dwellings, so the Board denied his special exception request. The Circuit Court for Harford County, Maryland found the Zoning Regulations susceptible of another interpretation and ordered the Board to issue the special exception. Such disagreements are the genesis of the multitude of zoning decisions which make their way to the state courts each year. State judicial review of zoning decisions is provided pursuant to the statutory framework of the Model Zoning Act which has been, in some form, universally adopted in the fifty states. Charles A. Rathkopf, The Law of Zoning and Planning §1.01, p. 1-17 (4th Ed.).

Beginning with the admonition in Village of Belle Terre v. Boraas, 416 U.S. 1, 12 (1974), that a federal court "should not . . . sit as a zoning board of appeals," this Court's precedents have served to underscore the First Circuit's observation that "run of the mill dispute[s] between a developer and a town planning agency" are primarily matters of state concern and do not "implicate the Constitution." Creative Environments Inc. v. Estabrook, 680 F.2d 822, 833 (1982). The Fourth Circuit viewed this case as just such a run of the mill development

dispute properly left for local resolution. Biser v. Town of Bel Air, 991 F.2d 100, 105 (4th Cir. 1993). It properly affirmed the district court's determination that Biser's grievance against the Town of Bel Air, its employees and the members of its Board of Appeals did not rise to the level of a substantive due process violation under the Fourteenth Amendment.

I. THE DECISION BELOW CORRECTLY APPLIED THIS COURT'S CONTROLLING PRECEDENT IN HOLDING THAT THE EXERCISE OF DISCRETION IN GOVERNMENTAL LAND USE DECISIONS DEFEATS A SUBSTANTIVE DUE PROCESS CLAIM.

Petitioner challenges the Fourth Circuit's focus on the element of discretion as the determinant of whether a property interest in the grant of a special exception exists under Maryland law so as to trigger Fourteenth Amendment Due Process protections. Petitioner notes that most zoning decisions involve the exercise of discretion and to hold that the presence of governmental discretion in zoning matters vitiates any ability to establish the property interest requisite to a due process claim removes an entire class of interests from the protection of the Due Process Clause.

The answer to Petitioner's charge is found in Board of Regents v. Roth, 408 U.S. 564 (1972) and Perry v. Sindermann, 408 U.S. 593 (1972), the decisions which marked a turning point in both procedural and substantive due process analysis. This Court observed in Roth that:

> "the words 'liberty' and 'property' in the Due Process Clause of the Fourteenth Amendment must be given some meaning."

Roth at 572. This Court proceeded to give meaning to the concept of property by explaining that:

> "[t]o have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it."

Roth at 577. The Court pointed to State law and other rules or understandings as the source upon which a claim of entitlement to a benefit must rest.

The claim of entitlement standard enunciated in Roth has guided the First[1], Second[2], Fourth[3], Sixth[4], Seventh[5], Eleventh[6] Circuits and,

[1] Roy v. City of Augusta, Maine, 712 F.2d 1517, 1522 (1st Cir. 1983).

on occasion, the Eighth[7] Circuit in their analyses of both procedural and substantive due process challenges to property specific governmental land use decisions (sometimes referred to as quasi-legislative or administrative decisions)[8]. That analysis begins with the irrefutable logical premise that a person who claims that he was deprived of liberty or property without the process guaranteed by the Fourteenth Amendment must first identify the affected liberty or property interest.

The Due Process Clause has served the historical role of safeguarding citizens from arbitrary or oppressive actions and deliberate

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[2] RRI Realty Corp., Inc. v. Village of Southampton, 870 F.2d 911, 918 (2nd Cir. 1989); Yale Auto Parts, Inc. v. Johnson, 758 F.2d 54, 58 (2nd Cir. 1985).

[3] Gardner v. City of Baltimore, 969 F.2d 63, 68 (4th Cir. 1992); [3]Scott v. Greenville County, 716 F.2d 1409, 1418 (4th Cir. 1983).

[4] Silver v. Franklin Township Bd. of Zoning Appeals, 966 F.2d 1031, 1035-1036 (6th Cir. 1992).

[5] Swartz v. Scruton, 964 F.2d 607, 609 (7th Cir. 1992).

[6] Spence v. Zimmerman, 873 F.2d 256, 258 (11th Cir. 1989).

[7] Carolan v. City of Kansas City, MO., 813 F.2d 178, 181 (8th Cir. 1987).

[8] See, e.g., discussion of the legislation/administrative distinction and its implications for due process analyses in Pearson v. City of Grand Blanc, 961 F.2d 1211, 1220 (6th Cir. 1992).

abuses of governmental authority. Hurtado v. People of State of California, 110 U.S. 516 (1884). But this Court has been ever mindful that the substantive component of the Due Process Clause is the result of judicial interpretation and that the history of Due Process Clause "counsels caution and restraint." Moore v. City of East Cleveland, Ohio, 431 U.S. 494, 502 (1977) (opinion of Powell, J., for a plurality). Thus, the "claim of entitlement" inquiry provides a textual basis for one strand of substantive due process analysis and serves to limit the protections of the Due Process Clause to those interests which are deemed property, or a species of property, under state law.

The analytical framework of Roth for procedural due process claims was extended in Regents of the Univ. of Michigan v. Ewing, 474 U.S. 214 (1985). The Court assumed the existence of Ewing's property interest in a six-year program of study culminating in an undergraduate degree and medical degree in evaluating his substantive due process challenge to dismissal from the program. The procedural posture of Ewing is analogous to the type of property specific land use decision that comprises the vast majority of governmental zoning actions, i.e., the

challenge was to a particular decision, rather than to an entire legislative scheme. The earlier substantive due process challenges to land use regulations tended to be direct attacks on the validity of the legislative zoning enactment, itself, which survived challenge unless judicially deemed "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals or general welfare." Village of Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365, 395 (1926). Legislative land use schemes still come under substantive due process challenge from time to time,[9] but the greater number of substantive due process attacks on land use decisions are directed to governmental denials of rezonings, variances, special exceptions, subdivision, etc., – all of which require the exercise of discretion.

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[9] See, Midnight Sessions Ltd. v. City of Philadelphia, 945 F.2d 667 (3rd Cir. 1991) ("rational basis" test of Williamson v. Lee Optical of Oklahoma, Inc., 348 U.S. 483, 487-88 (1955) used in reviewing a challenge to a dance hall licensing scheme which gave great weight to police department approval and neighborhood opposition in the decision making process); and Southview Assoc. Ltd. v. Bongartz, 980 F.2d 84 (2nd Cir. 1992) (substantive due process challenge to a Vermont environmental law designed to protect deeryards which significantly reduced the developer's buildable area of the developer's property).

The focus on the element of discretion as a means of determining whether the land use applicant has a property interest derived from a legitimate claim of entitlement is the inevitable logical byproduct of this Court's terminology. "Entitlement" connotes something akin to a legal right. The concept of "right" is incompatible with an exercise of discretion, a function involving latitude of judgment.

The law of mandamus provides insight into the extent to which the exercise of discretion in the grant of a governmental approval removes the required approval from the category of legal rights which can be compelled by order of court. The writ of mandamus has been the historical vehicle for compelling corporations, inferior tribunals or public officers to perform their duties. George's Creek Coal & Iron Co. v. Allegheny County Comm'rs., 59 Md. 255, 259 (1883). The party applying for the writ must establish a clear legal writ to the requested action. Id. The writ will be held if the duty sought to be compelled is discretionary or requires the exercise of judgment. This Court has consistently held that the interpretation of a statute involves an exercise of judgment which cannot be controlled by mandamus. Panama Canal

Co. v. Grace Line, 356 U.S. 309 (1958); Wilber v. United States, 281 U.S. 206 (1930). Most zoning applications and land use decisions involve an interpretation of the controlling land use regulation or ordinance. Thus, it is appropriate that the exercise of discretion required in interpreting and applying land use regulations would defeat a claim of entitlement.

Petitioner is correct that the Roth entitlement, focused as it is on the presence or absence of discretion by the local land use regulation will relegate many, if not most, substantive due process challenges to disposition by motion to dismiss or summary judgment[10].

But the limiting effect of the "claim of entitlement" analysis does not result from the focus on the range of discretion exercised in the challenged regulatory decision as the principal criteria for determining the existence of a property interest subject to due process protection. It

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[10] At least the Second Circuit and the Fourth Circuit have straightforwardly acknowledged that their analysis of entitlement serves the salutary purpose of preventing federal courts from becoming zoning boards of appeals. See, e.g., RRI Realty Corp. v. Village of Southampton, supra, at 918; Gardner v. Baltimore Mayor and City Council, supra, at 67.

is the threshold requirement that a property interest is a requisite to substantive due process claim that proves to be the proverbial "eye of the needle" through which many claims do not pass. However, that threshold requirement derives from adherence to this Court's guidance in Roth, Perry, and Ewing. Had this Court meant to limit the applicability of Roth and Perry to procedural due process claims, the presence of a cognizable property interest would not have been assumed in Ewing.

> We therefore accept the University's invitation to 'assume the existence of a constitutionally protectible property right in [Ewing's] continued enrollment,'[Fn. 8] and hold that even if Ewing's assumed property interest gave rise to a substantive right under the Due Process Clause to continued enrollment free from arbitrary state action, the facts of the record disclose no such action.

Id. 474. U.S. at 223.

The application of the property interest requirement is viewed by some commentators as an unwarranted restriction on the historical function of the substantive due process component of the Fourteenth Amendment. See, e.g., J. Michael McGuinness and Lisa A. McGuinness Parlegreco, The Reemergence of Substantive Due Process As a Constitutional Tort: Theory, Proof, and Damages, 24 New Eng.

L. Rev., 1129, 1133-35 (1990). However, the concern is misplaced. The Due Process and Equal Protection Clauses of the Fourteenth Amendment remain as guardians against arbitrary governmental conduct which infringes on fundamental interests. Even absent a cognizable property interest, a substantive due process challenge to the withholding of a governmental approval may be premised on the charge that the denial infringed other constitutionally protected interests. Perry, 408 U.S. at 597. The Fourth Circuit eschewed the property interest analysis for substantive due process purposes when it recognized an individual's right to governmental decisions which are free from irrational, religious bias in Marks v. City of Chesapeake, 883 F.2d 308 (4th Cir. 1989). Thus the unduly "crabbed" approach which Petitioner believes the Fourth Circuit has taken to substantive due process challenges in the land use arena is simply not supported by a fair reading of the decisional law of the Circuit.

This narrowed federal focus is entirely consistent with this Court's delineation of the narrow scope of federal review in substantive due process claims. Ewing, 474 U.S. at 227. The Court's expressed reluctance to "trench on the prerogatives of state and local institutions in

the area of academia,"[11] and personnel decisions[12] is echoed by the Fourth Circuit's similar reluctance in Gardner to enter the arena of land disputes:

> Resolving the routine land-use disputes that inevitably and constantly arise among developers, local residents, and municipal officials is simply not the business of the federal courts. There is no sanction for casual federal intervention into what "has always been an intensely local area of the law." Rose, Planning and Dealing: Piecemeal Land Controls as a Problem of Local Legitimacy, 71 Calif. L. Rev. 839, 839 (1983).

969 F.2d at 67. The standard for determining the existence of a property interest which Petitioner challenges does not merit review because it is consistent with this Court's controlling precedent and the weight of authority in the circuits.

Petitioner also claims that the Fourth Circuit's examination of the potential sources of a property interest was unduly restricted to the Town's Zoning Regulations, thus ignoring Respondents' conduct as a possible source of a protected property interest. Petitioner points to the fact that the Circuit Court for Harford County held that Respondents were equitably estopped by their conduct from denying Petitioner's special exception as the non-statutory source of a property interest.

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[11] Ewing, 474 U.S. at 226.

[12] Bishop v. Wood, 426 U.S. 341, 349 (1976).

The Fourth Circuit considered but rejected Petitioner's argument as unfounded in Maryland law. "Estoppel does not, however, give rise to any affirmative duties." Biser v. Town of Bel Air, 991 F.2d 100, 104 (1993), citing Leonard v. Sav-A-Stop Services, Inc., 289 Md. 204, 424 A.2d 336, 339-40 (1981). Thus, the Fourth Circuit did not confine its inquiry to an examination of the discretionary character of a special exception (sometimes referred to as a "conditional use") in Maryland and, particularly, in the Town's Zoning Regulations. Mindful of this Court's comment that property interests meriting due process protection are not "limited by a few rigid technical forms",[13] the Fourth Circuit evaluated Petitioner's asserted property interest by equitable estoppel, but found no source for that interest in Maryland law. In Ewing, 474 U.S. at 224 this Court reiterated that property interests based on "mutually explicit understandings" must be derived from an independent source, such as state law. Similarly, a property interest created by equitable estoppel must stem from Maryland law.

[13] Perry, 408 U.S. at 601.

II. THIS CASE DOES NOT MERIT THE COURT'S ATTENTION AS A VEHICLE FOR DEFINING THE APPROPRIATE STANDARD OF FEDERAL REVIEW IN SUBSTANTIVE DUE PROCESS CHALLENGES TO LAND USE DECISIONS.

Petitioner maintains that this case warrants review because of the divergence of approaches among the circuits in substantive due process challenges to land use decisions, citing Pearson v. City of Grand Blanc, 961 F.2d 1211 (6th Cir. 1992), in which the Sixth Circuit surveyed the supposedly diverse approaches of the circuits. Assuming, arguendo, that the circuits would benefit from guidance in this area and that Petitioner could establish a property interest sufficient to invoke Fourteenth Amendment protection, there is no reason for the Court to review this case. Petitioner's Complaint did not describe conduct that would qualify as a substantive due process violation under this Court's standards or the standards of any of the circuits, and the district court so held.

The district court granted Respondents' motion to dismiss, after noting that it was satisfied that the Complaint contained sufficient "allegations to support a claim of deprivation of substantive due process," (Pet. at B-2) although Respondents had argued that Petitioner's lack of entitlement to a special exception under Maryland law defeated his § 1983 claim as a threshold matter. The district court did not find Petitioner's lack of entitlement to a special exception fatal to his due

process claim.[14] The district court considered the pending motion to dismiss on the merits. The facts alleged in the Complaint were taken as true, examined in detail and measured against the enunciates of Zinermon v. Burch, 494 U.S. 113 (1990), Daniels v. Williams, 474 U.S. 327, 331 (1986) and Monroe v. Pape, 365 U.S. 167, 173-174 (1961) that the Due Process Clause stands as a bulwark against the arbitrary exercise of the powers of government regardless of how procedurally fair the exercise of power. Simply put, the district court rejected Petitioner's contention that the conduct of the employees and officials of the Town of Bel Air rose to the level of a substantive due process violation, (Pet. at B-13). The District Court viewed the allegations of the Complaint to describe governmental behavior which resulted from varying interpretations of an ambiguous zoning regulation, at most amounting to a lack of due care, (Pet. at B-13). The district court declined[15] to trivialize the "centuries old principle of Due Process law" by evaluating "bureaucratic bungling"

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[14] The Fourth Circuit had held in Scott v. Greenville County, 716 F.2d 1409 (4th 1983), that substantive due process analysis must begin with an identification of a property interest rooted in State law, but its decision in Marks v. City of Chesapeake, 883 F.2d 308 (1989) departed from that analytic approach. However, in Gardner v. Baltimore Mayor and City Council, 969 F.2d 63 (1992), the Fourth Circuit unequivocally held that a cognizable property interest is an essential element of a substantive due process claim and that any significant element of discretion in the grant or denial of a zoning application or land use approval vitiates the claim of entitlement which is an essential requisite of a property interest under Roth.

[15] As did this Court in Daniels v. Williams, 474 U.S. 327, 332 (1986).

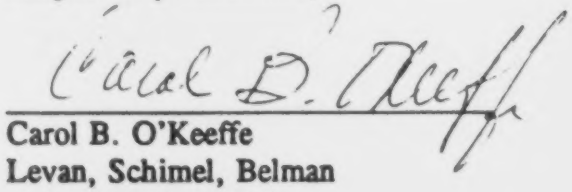
to a violation of the Fourteenth Amendment. Id. This holding was consonant with the Sixth Circuit's careful exposition of the difference between the terms "arbitrary and capricious" for purposes of state court review of administrative land use decisions and the meaning of those terms for purposes of federal review. Although acknowledging that the "shocks the conscience" terminology is perhaps more apt in cases involving physical force, the Sixth Circuit, nevertheless, accepted that standard in land use cases as a useful reminder that, "arbitrary" and "capricious" in the federal substantive due process context means something far different than in state administrative law. Pearson, 961 F.2d at 1222. The district court's ratio decidendi in the instant case was also consistent with this Court's pronouncement that a substantive due process violation requires more than a lack of due care. Daniels v. Williams, supra, at 329.

There is little point for this Court to review the standards employed for determining the existence of a property interest in the context of land use decisions only to reach an examination of conduct of Town officials and employees which is remote from the historical embrace of substantive due process protections.

CONCLUSION

For the aforegoing reasons, Respondents request that the Petition for Writ of Certiorari be denied.

Respectfully submitted,



Carol B. O'Keeffe
Levan, Schimel, Belman
& Abramson, P.A.
9881 Broken Land Parkway, Suite 400
Columbia, Maryland 21046
(410) 381-6000
Attorney for Respondents

18PL4153.PCN

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ROBERT F. BISER :
2318 Turner Lane
Bel Air, Maryland :

Plaintiff :

v. :

TOWN OF BEL AIR, MARYLAND :
SERVE ON TOWN ADMINISTRATOR
William H. McFaul :
39 Hickory Avenue
Bel Air, Maryland 21014 :

CAROL L. DEIBEL, :
708 Churchville Road
Bel Air, Maryland 21014 :

D. DAVID RANNEY, JR. :
705 Churchville Road
Bel Air, Maryland 21014 :

EDSEL A. DOCKEN, SR., also known as : Civil No.
Dean Docken
705 Churchville Road :
Bel Air, Maryland 21014
:

JAMES M. DECKER
705 Churchville Road :
Bel Air, Maryland, 21014
:

JOHN E. YANTZ
705 Churchville Road :
Bel Air, Maryland 21014

DONALD YOUNG
705 Churchville Road
Bel Air, Maryland 21014

Defendants

COMPLAINT

Robert Biser, plaintiff, by his attorney, W. Michel Pierson, for complaint states:

1. This is an action arising under section 1983 of Title 42 of the United States Code, to redress the deprivation under color of state law of plaintiff's property rights, without due process of law, by the Town of Bel Air and its employees. Jurisdiction is conferred upon this court by Title 28, §1343 of the United States Code. Plaintiff's right not to be deprived of property without due process is protected by the Fourteenth Amendment, of the United States Constitution.

2. This court also has pendent jurisdiction over claims arising under the law of the state of Maryland, because these claims are based upon the same common nucleus of operative fact as those on which the claims under 42 U.S.C. §1983 are based.

3. Plaintiff Robert Biser is a citizen of the united States and the state of Maryland, residing at 2318 Turner Lane, Bel Air, Harford County, State of Maryland. Since 1978, Plaintiff has owned and operated Biser Construction Company,

a sole proprietorship, also located at 2318 Turner Lane, Bel Air, Harford County, State of Maryland.

4. Defendant, Town of Bel Air, is a municipal corporation duly organized and existing under the laws of the State of Maryland, located in Harford County.

5. At all times hereinafter mentioned, defendant Carol L. Deibel was the Director of Planning and Community Development of the Town of Bel Air.

6. At all times hereinafter mentioned, defendant D. David Ranney, Jr., was the superintendent of Public Works of the Town of Bel Air.

7. At all times hereinafter mentioned, defendant Edsel A. Docken, Sr., also known as Dean Docken, was the Assistant Planner of the Town of Bel Air.

8. At all times hereinafter mentioned, defendants James M. Decker, John E. Yantz and Donald Young were members of the Board of Appeals of the Town of Bel Air. The Board of Appeals is empowered among other things, to permit special exceptions to the Town zoning ordinance.

9. At all times described herein, the individual defendants were acting within the scope of their employment, and were acting pursuant to the official policy of the Town of Bel Air. At all times hereinafter mentioned, defendants were acting under color of the law of the state of Maryland.

10. At all times relevant hereto, plaintiff was the owner of a tract of real property located at the corner of Vale Road and Rockspring Avenue in the Town of Bel Air, Maryland.

11. Under the Town Zoning Ordinance effective in 1988, the property was situated in an "R-2" (General Residence) district of the Town of Bel Air. Properties in such a district were restricted to residential use, except that residential structures could be converted to professional office use through approval of a special exception by the Board of Appeals.

12. Plaintiff desired to build two office buildings on the property and developed preliminary plans for such a project. In August, 1988, plaintiff met with defendant Deibel to determine if his desired use of the property was permissible. Plaintiff presented his preliminary plans to defendant Deibel and expressed his intention to build two office buildings on the property. Plaintiff explicitly expressed to defendant Deibel that he wanted to build commercial office buildings, and sought defendant Deibel's recommendations regarding obtaining final special exception approval.

13. Deibel reviewed the preliminary plans, and determined that the layout of the buildings required setback variances. Therefore, defendant Deibel suggested that plaintiff first seek the setback variances, obtain building permits, construct the buildings and then request special exception

approval after the buildings were constructed. Defendant Deibel advised plaintiff that the buildings would have to exist before the Board of Appeals would grant the special exception approval to permit the "conversion" of the buildings to office use.

14. To obtain confirmation that this approach for obtaining zoning approval was in fact correct and permissible, plaintiff presented his plans and a rendering of the completed office buildings at a meeting of the Board of Appeals on September 27, 1988. Defendants Docken, Young, and Yantz were present at that meeting. Plaintiff expressly declared his plans for development and his desire to ascertain if any impediments existed before commencing construction. At that meeting, the Board did not object to the plans presented by plaintiff, and approved the setback variances.

15. In reliance on the approval by the Board of Appeals of the variances and its acquiescence with regard to plaintiff's long term proposal, plaintiff completed the building plans and applied for building permits in May 1989. The plans and application stated that the structures were to be commercial office buildings.

16. The application and plans were filed with defendant Docken. Without explaining his actions to plaintiff, defendant Docken struck out the references to the buildings as "commercial office buildings" and changed these references to

"dwellings". The building permit applications were then processed and approved.

17. Pursuant to the requirements for office buildings, plaintiff prepared and submitted a landscape plan. Such a landscape plan is not required for residential dwellings,. Plaintiff's plan was forwarded to the Appearance and Preservation Committee for review. The Committee approved the landscape plans. Based upon this as well as a review of the application, building permits were issued on June 27, 1989.

18. In reliance upon the issuance of building permits, plaintiff began construction of the buildings.

19. In August 1989, after substantial construction had been undertaken, plaintiff sought finalized approval of the storm water management plans. Final approval was required in order to install the underground storm water management facilities, which had to be finished before the parking lot on the property could be paved. Due to the nature of this type of underground work, plaintiff wished to complete the storm water management facilities during the fall in order to avoid a delay of several months in completing this work. Plaintiff was advised by employees of defendant Town that the storm water management plans would not be finally approved until the Board of Appeals had granted the special exception for the office buildings.

20. Therefore, plaintiff contacted defendant Deibel in late August 1989 to ascertain what plans and construction on the buildings he had to complete to obtain approval for the special exception. In soliciting this information, Plaintiff advised defendant Deibel of the reason why plaintiff needed to receive approval for the special exception as soon as possible, and the resulting problems if the construction was delayed.

21. Defendant Deibel advised that plaintiff could apply for the special exception approval as long as the building wa "under roof" and the windows were installed prior to the Board of Appeals hearing.

22. In reliance on this advice, plaintiff filed the application for the special exception approval, and completed the necessary construction on the buildings prior to the meeting of the Board of Appeals on September 26, 1989.

23. Plaintiff presented his application to defendants Yantz, Young and Decker at the September 29, 1989 meeting. Defendant Docken was also present at the meeting. Plaintiff explained that this project was the same as had been presented to the Board in 1988 and the building had been constructed consistent with the plans shown to the Board at said meeting. The Board of Appeals did not issue a decision.

24. On September 28, 1989, defendant Ranney issued a stop work order to Plaintiff. The stated basis of the stop work order was the failure of buildings to comply with the

requirements of the Building Code related to single family dwellings. The order stated that the structures would have to be corrected to be suitable for residential use.

25. Plaintiff protested the stop work order and pointed out his reliance on the prior approval of his plans. Defendants Ranney and Deibel, however, refused to rescind the order.

26. Because of the lengthy and costly delay that would otherwise be entailed, plaintiff had no choice other than to comply with defendant Ranney's requirements. Accordingly, plaintiff revised the plans and installed bathroom and kitchen facilities as required by the stop work order. As the result of these changes, the stop work order was lifted on October 16, 1989.

27. The Board of Appeals met again on October 24, 1989 to consider plaintiff's application. Plaintiff again presented his application, outlining the changes to the plans and the work he had completed on the building in order to comply with the stop work order. Plaintiff presented evidence to show reliance, to his detriment, upon the prior information and approvals received from the Board of Appeals, Bel Air, and their respective employees regarding the construction of the buildings. This reliance included substantial monies and time expended by plaintiff in constructing his buildings. The Board of Appeals denied the request for a special exception.

28. Plaintiff filed an appeal to the Circuit Court for Harford County, challenging the Board's denial of the request for a special exception. On appeal, the court concluded that the Town of Bel Air and the Board of Appeal were estopped from denying the approval because of plaintiff's reliance on defendants' representations regarding the procedure for obtaining a special exception. The court concluded that the Board erred in denying the special exception and remanded the case with instructions to grant the special exception.

29. After the action of the Circuit Court, plaintiff was further delayed by defendants in obtaining the necessary approvals to complete his construction. Defendants repeatedly imposed additional requirements and created new impediments to completion of the project. Defendants attempted to require plaintiff to construct sidewalks and widen Vale Road, although these requirements were inconsistent with the site plan previously submitted. Defendants delayed approval of the storm water management plan. Defendants attempted to require alteration to the parking lot.

30. As a result of these requirements, plaintiff could not obtain approval of the construction until May 1990. A final use and occupancy permit was not issued until October 16, 1990.

31. Plaintiff was subjected to substantial additional expenses as a proximate result of delays caused by defendants'

conduct, including additional construction costs, attorneys fees and carrying costs. Plaintiff lost opportunities to lease the building, depriving him of substantial income. Defendants' conduct also proximately caused plaintiff to undertake additional work on the buildings, which resulted in greater and unnecessary expense.

32. Plaintiff suffered additional losses of good will and prospective income as a proximate result of the delays caused in completion of the construction, as well as the bad press created by the circumstances surrounding plaintiff's obtaining approvals and permits.

33. Plaintiff suffered emotional and mental anguish, distress and pain as a result of the actions of defendants.

34. Defendants' actions in denying plaintiff a special exception and in halting, delaying and impeding construction and completion of the project were arbitrary and capricious, were without rational basis, were not rationally related to any permissible governmental objective, and were not founded in any legal requirements.

35. On or about March 31, 1990, plaintiff made claim with the Town for damages suffered as a result of defendants' actions, which claim has not been allowed.

COUNT I

36. Plaintiff adopts and incorporates paragraphs 1 through 35 of this complaint.

37. By their actions, defendants deprived plaintiff of property without due process of law, in violation of the Fourteenth Amendment to the United States Constitution.

38. As a result of such deprivation, plaintiff incurred damages as herein alleged.

WHEREFORE, plaintiff demands judgment:

A. For compensatory damages against all defendants in the sum of $1,000,000.00.

B. For punitive damages against the individual defendants in the sum of $1,000,000.00;

C. For an award of plaintiff's costs and reasonable attorneys' fees;

D. For such other and further relief as the court deems proper.

COUNT II

39. Plaintiff adopts and corporations paragraphs 1 through 36 of this Complaint.

40. By their actions, defendants deprived plaintiff of his rights under article 24 of the Declaration of Rights of Maryland.

41. As a result of such deprivation, plaintiff incurred damages as herein alleged.

WHEREFORE, Plaintiff demands judgment:

A. For compensatory damages against the individual defendants in the sum of $1,000,000.00;

B. For punitive damages against the individual defendants in the sum of $1,000,000.00;

C. For such other and further relief as the court deems proper.

COUNT III

42. Plaintiff adopts and incorporates paragraphs 1 through 41 of this complaint.

43. The individual defendants intentionally and maliciously denied and interfered with plaintiff's property rights, without legal justification, and abused their powers in interfering with plaintiff's rights.

44. Defendants' actions were done for improper motive, and were done knowingly and deliberately.

WHEREFORE plaintiff demands judgment;

A. For compensatory damages in the sum of $1,000,000.00;

B. For punitive damages in the sum of $1,000,000.00; and

C. For such other and further relief as the court deems proper.

W. Michel Pierson
Attorney for Plaintiff
Suite 1600
217 E. Redwood Street
Baltimore, Maryland 21202
(301) 727-7733